IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 52 OF 2002

State of Goa,
through Shri Raghuvir
D. Bhise, Drugs Inspector,
Directorate of Food & Drugs
Administration, Campal,
Panaji, Goa. ... Appellant.

versus

1. Shri Tejpal P. Pandia,
   Proprietor,
   10/4/1 Kamarkrupa Road,
   Bangalore 560 001.

2. M/s. Tejpal & Co.
   (Karnataka)
   B-380 Peenya Industrial
   Estate, Bangalore 560 058. ... Respondents.

Mr. S. N. Sardessai, Public Prosecutor for the State.

Mr. A. D. Bhobe, Advocate for the Respondents.

CORAM: P. V. HARDAS, J.

DATED: 13TH NOVEMBER, 2003.

ORAL JUDGMENT

The State being aggrieved by the acquittal of the Respondents for an offence punishable under Section 27 of the Drugs and Cosmetics Act, 1940, as recorded by the learned Judicial Magistrate First Class, Bicholim,

by Judgment dated 20th August, 2002, in Criminal Case No. 20/0A/96/A, has filed the present Appeal.

2. The facts in brief as are necessary for the decision of this Appeal are set out hereunder:-

P.W.1, Raghuvir Bhise, a Drug Inspector appointed under Section 21 of the Drugs and Cosmetics Act, 1940, visited the premises of one M/s. National Agencies on 28th June, 1995. During his visit, he found that several drugs meant for sale were stocked in the premises. P.W.1, Raghuvir Bhise, drew in quantities 4x1x15 gms of Framycetine skin cream 1% W/W, bearing batch No.144 with the date of manufacture as November, 1994 and having an expiry date of 24 months from the date of manufacture. The said drug, of which the sample was drawn was manufactured by the Respondents. The drug was thereafter sent for analysis and the said drug was found to be not conforming to the standards for Framycetine Sulphate in terms of Section 16(1)(a) read with the standards set out in the second schedule. On the basis of the report of the Analyst, P.W.1, Raghuvir Bhise, filed a complaint in the Court of Judicial Magistrate First Class, Bicholim against the present Respondents.

3. The learned Judicial Magistrate First Class,

Bicholim, vide Exh.24 explained the particulars of the offence to the Accused who pleaded not guilty and claimed to be tried. The prosecution in support of its case examined 3 witnesses while the Accused in their defence examined one Pasupathi Supaya as AW.1. The learned Judicial Magistrate First Class, Bicholim, recorded the finding of not guilty and acquitted the Respondents/Accused. Hence, the present Appeal. The learned Trial Court acquitted the Accused principally on the ground that P.W.1, Raghuvir Bhise, had admittedly not taken the samples in the presence of independent witnesses nor had he drawn a panchanama regarding the drawing of the samples. According to the learned Trial Court, such contemporaneous record was extremely vital in order to prove the drawing of the samples. The learned Trial Court further acquitted the Accused on the ground that the report of the Government Analyst had not been sent to the Respondents/Accused and, therefore, a valuable right to have the report of the Government Analyst questioned by referring the sample for analysis had been deprived.

4. With the assistance of the learned Public Prosecutor appearing on behalf of the State and the learned Counsel appearing on behalf of the Respondents/Accused, I have perused the evidence of the witnesses. In respect of the drawing of the sample,

P.W.1, Raghuvir Bhise, has this to say:

> "That, I, at the time of drawing the sample of the said drugs, issued an intimation in Form - 17, as required under Rule 56 of Drugs and Cosmetic Rule 1945 informing the purpose of drawing the said sample and the receipt of which was obtained by signing duplicate copy of the said Form-17".
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> "All the samples that were drawn were effectively sealed and suitable marked in presence of Mr. Vijay Sardessai, Proprietor cum Competent person of the said premise, as required under Section 23(4) of Drugs and Cosmetics Act".

5. A perusal of this evidence would clearly indicate that P.W.1, Raghuvir Bhise, has not deposed about the manner in which the samples were taken and the manner in which the samples were sealed. No details are given in respect of the containers which were used nor are details given regarding the sealing of the samples including the description of the seal. The learned Trial Court while referring to Section 22(2) of the Drugs and Cosmetics Act, 1940 has come to the conclusion that the aforesaid provision makes the provisions of the Code of Criminal Procedure 1973 (2 of 1974) applicable to any search or seizure under that chapter as the provisions of the Code of Criminal Procedure apply to any search or seizure made under the authority of a

warrant issued under Section 94 of the Code of Criminal Procedure. The learned Trial Court by referring to Section 104 of the Code of Criminal Procedure has held that it was necessary for the Drug Inspector to have drawn a panchanama in the presence of two independent witnesses while taking the sample.

6. The purpose of seizure of any document or article in the presence of independent persons lends assurance to the Court in respect of the factum of seizure of that document or an article. A contemporaneous document like that of a panchanama which evidences such seizure of a document or an article has great corroborative value. In the present case, apart from the fact that P.W.1, Raghuvir Bhise, has not deposed about the details of the drawing of the samples, the samples were not drawn in the presence of any independent persons nor was a panchanama drawn to that effect. The prosecution has examined P.W.3, Vijay Sardessai, who was the proprietor of M/s. National Agencies from whose shop the sample was drawn. P.W.3, Vijay Sardessai, also only states "on 13.8.96 when the Drug Inspector R. D. Bhise came to my premises and took some samples. The samples were obtained of Framycetine skin cream of 14 tubes were taken by the said Bhise. Two of our staff members were present during the seizure. Arun Hoble and Manohar Bordekar and

they have both signed the panchanama. I also signed the panchanama and I identify my signature at point 'X' at Exh.PW3/A".

7. It appears that a panchanama in respect of the seizure was prepared by P.W.1, Raghuvir Bhise. However, no panchanama was drawn in respect of the drawing of the samples. P.W.1, Raghuvir Bhise, also does not speak about the details of the seal which was affixed. The report of the Government Analyst at Exh.PW1/F refers to the fact that the seals were intact and tallied with the specimen impression of the seal received separately. A letter bearing the specimen seal impressions is at Exh.PW1/E. This letter is dated 13th July, 1995 i.e. after more than 15 days of the drawing of samples. It appears that the letter of specimen seals was not prepared at the spot when the samples were sealed. The samples were admittedly, according to P.W.1, Raghuvir Bhise, in his custody from 20th June, 1995 till 30th July, 1995. Thus, the importance of the report of the Chemical Analyst is completely whittled down by virtue of these facts.

8. The learned Trial Court, therefore, according to me, was completely justified in acquitting the Respondents/Accused. The reason given by the learned Trial Court for acquittal of the Respondents/Accused is

not perverse and the view of the learned Trial Court is a possible view on the basis of the evidence on record. Coupled with the finding of the learned Trial Court, the discrepancies noticed by me above, amply justify the acquittal of the Respondents/Accused.

9. In view of this, there is no substance in the Appeal and the same is dismissed.

P. V. HARDAS, J.

RD.